

# Australia announces plans for BEPS anti-hybrid legislation

July 17, 2015

## In brief

The Australian government released, on July 14 2015, the terms of reference for the Board of Taxation's (BoT) consultation on implementing the OECD's anti-hybrid rules.

The government has requested the BoT's report by March 2016 so that the anti-hybrid rules can be considered in the 2016 federal budget (expected to be announced May 12, 2016). The government has not announced an effective date for the rules. However, at this stage we expect the budget to include the effective date.

## In detail

### Background

The OECD published, on September 16, 2014, a report on hybrid mismatches (Action 2); the G20 Finance Ministers had approved the report at their September 20-21, 2014 meeting.

Action 2 recognized that the recommended domestic tax rules may need further refinement. Additional work was planned for 2015 on imported mismatches, repurchase agreements, interaction with controlled foreign companies (CFCs), regulatory capital and collective investment vehicles, and considerations from other Base Erosion and Profit Shifting (BEPS) workstreams.

According to the BoT terms of reference, an OECD report expected in October 2015 will

include guidance on the practical operation of the rules and refinements on some outstanding issues. The report will set out the principles behind the recommendations and agreed definitions and will include detailed examples of the anti-hybrid rules' practical application.

### Terms of Reference

The government has asked the BoT to examine how best to implement anti-hybrid rules in Australia, specifically considering:

- the objectives for eliminating double non-taxation, including long-term tax deferral
- economic costs for Australia
- compliance costs for taxpayers, and

- interactions between Australia's domestic legislation (e.g., the debt-equity rules and regulated capital requirements for banks), international obligations (including tax treaties) and the new anti-hybrid rules.

The government requested the BoT to report back by March 2016 so that this issue to be considered as part of the 2016 budget.

**Observation:** Australia apparently intends to be an 'early adopter' of the BEPS action item on hybrid mismatches.

### The takeaway

Australia seems ready to quickly adopt the G20

recommendations which are designed to minimize the effects of hybrid mismatch arrangements.

Although the government has not clarified the effective date, it will likely announce a start date no later than

May 2016. This might suggest an effective date of July 1, 2016 (or perhaps January 1, 2017 for companies that have adopted a December 31 year-end for Australian income tax purposes).

This proposal may impact US investors so they should consider how the rules might apply to their particular facts and circumstances.

## ***Let's talk***

For a deeper discussion of how the Australian anti-hybrid legislation may impact your business, please contact:

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